IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) R.S.A.No.447 of 1987
Date of decision : 12.9.2006

Hukam Chand

.....Appellant

Vs.

Hari Singh (dead) through LRs

....Respondent

2) R.S.A.No.1706 of 1987
Date of decision : 12.9.2006

Hari Singh (dead) through LRs

.....Appellant

Vs.

Hukam Chand

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. K.S.Boparai, Advocate
for Hukam Chand (appellant in RSA No.447 of 1987 and respondent in RSA No.1706 of 1987).

Mr. H.S.Riar, Advocate with
Mr. P.S.Kang, Advocate
for the LRs of Hari Singh (respondent in RSA No.447 of 1987 and appellant in RSA No.1706 of 1987).

...

MAHESH GROVER, J.

This judgment will dispose of Regular Second Appeals bearing Nos.447 and 1706 of 1987 as they revolve around the same controversy. The facts are being extracted from RSA No.447 of 1987.

This Regular Second Appeal No.447 of 1987 is directed against the judgment of the lower appellate Court dated 15.12.1986 vide which the findings of the learned trial Court in its judgment dated 11.5.1985 were reversed.

Briefly stated the facts of the case are that the plaintiff-appellant Hukam Chand filed a suit against the present respondent for possession of the suit property by way of a suit for specific performance. The respondent is alleged to have executed an agreement to sell dated 7.2.1980 for sale of agricultural land measuring 71 kanals 4 marlas. The sale deed was to be executed on 1.6.1980, which time was extended upto 25.6.1980. Rs.50,000/- were paid by way of earnest money. Three sale deeds were executed by the respondent in pursuance to this agreement to sell. The first sale deed was executed on 4.6.1980 pertaining to 26 kanals 8 marlas of land; the second on 10.6.1980 qua 11 kanals 8 marlas and third on 26.6.1980 qua 26 kanals 8 marlas. Out of 71 kanals 4 marlas, the land measuring 64 kanals 4 marlas was sold to the appellant and only

7 kanals of land was left. The appellant had sought possession of this 7 kanals of land by way of the present suit.

The suit was contested by the respondent who set up the plea that the agreement could not be enforced as the property in question was a coparcenary property and the agreement was not executed voluntarily. The receipt of earnest money was also denied.

On the pleadings of the parties, the following issues were framed :

1. Whether defendant No.1 had executed agreement of sale dated 7.2.1980 and had received Rs.50,000/- as earnest money?OPP
2. Whether plaintiff had been ready and willing to perform his part and is still ready and willing to perform?OPP
3. If specific performance is not granted whether plaintiff is entitled to refund of earnest money and damages, if so to what extent?OPP
4. Whether property in suit is co-parcenary property. If so to what effect?OPD
5. If issue No.1 is proved whether the agreement in

question is the result of fraud, undue influence or misrepresentation, if any?OPD

6. Relief.

The trial Court decreed the suit of the appellant. An appeal preferred by the respondent was accepted and the judgment of the learned trial Court dated 11.5.1985 was reversed. It was held by the learned lower appellate Court that the property was a coparcenary property and, therefore, could not have been sold by the respondent.

It has been contended by Mr. K.S.Boparai, learned counsel for the appellant that once the agreement to sell has been established, then it was not open to the respondent to plead that the same could not be executed on the ground that he was not authorised to sell the land or to plead a defect of title in himself. The second contention raised was that the plea that the property could not be alienated on the ground of its being coparcenary in nature could have been raised only by the sons of the respondent who could have been aggrieved by it and in the absence of other co-parceners being a party to the proceedings, such a plea was unavailable to the respondent. The third contention that was raised was that the Courts could not have gone into the matter regarding the coparcenary nature

of the property in a suit for specific performance filed by the appellant.

The aforesaid contentions of the learned counsel for the appellant were sought to be repelled by the learned counsel for the respondent on the plea that the property was coparcenary property and could not have been alienated. The agreement in question, therefore, was rendered unenforceable and the lower appellate Court had correctly answered the controversy.

It may not be out of place to mention here that Regular Second Appeal No.1706 of 1987 has been filed by the present respondent against the direction of the lower appellate Court for refund of earnest money in exercise of its discretion under Section 20 of the Specific Relief Act.

I have heard the learned counsel for the parties at length and have perused the record as well and have given my thoughtful consideration to the matter.

The suit was based on the agreement to sell dated 7.2.1980. The respondent in his written statement has denied the execution of the agreement but interestingly three sale deeds have been executed by the respondent pursuant to this agreement to sell

and it is only qua the residuary 7 kanals of land (which is the subject matter of the suit) that the respondent has raised the plea of in-executability on the ground of the property being ancestral and coparcenary in nature. Both the Courts have returned a finding about the existence and validity of the agreement. That being so, once it is established that there was a valid agreement to sell, then nothing more can be read into the agreement. A document has to be read as it is. It is also not open to the respondent to raise the plea of defect in title. The vendee cannot put forward a plea that he had no title or had a defective title and especially in view of the facts of the present case when three sale deeds have already been executed. The plea sought to be raised by the respondent is only a manifestation of his dishonest intention.

The validity of agreement to sell stands established by the fact that out of 71 Kanals and 4 Marla, which was the subject-matter of the agreement of sale, 64 kanals and 4 marlas has already been transferred in the name of the appellant. In fact, agreement has been acted upon substantially. The plea of defective title raised by the executor of the agreement is not permissible.

The only questions that are necessary to be determined

in a suit for specific performance are the validity of the agreement and the willingness of the vendee to perform his part of the agreement. The fact that a third party right might be defeasible is no ground to refuse specific performance of the agreement. The rights of the contracting parties are to be seen from the intent and the content of the agreement.

Even if it is assumed that the property was coparcenary in nature, yet there would be no bar on the Karta or the Manager of the property to sell the same. The only ground on which the sale cannot be effected is if it is not for legal necessity. A Karta or manager is entitled to sell the property belonging to co-parceners if it is for legal necessity and it is for the benefit of the estate. These facts have to be established independently. But a sale cannot be preempted or thwarted only on the ground that the same is likely to affect the rights of the co-parceners and especially in view of the fact that the plea of the property being coparcenary in nature rendering the agreement inexecutable has been raised by the executor of the agreement.

Apart from this, the overwhelming fact which negates the plea raised by the respondent is that pursuant to this very

agreement he has already sold 64 kanals and 4 marlas of land. He cannot be permitted to take this plea of coparcenary property rendering the agreement inexecutable qua only 7 kanals of land. The sale qua the major portion of the land was made without a whimper. The respondent is, therefore, estopped by his own conduct to raise this plea of the agreement being inexecutable on account of defective title.

Lastly, the learned appellate Court has returned a finding that the property is coparcenary in nature, which is also based on no evidence. The respondent has not been able to establish from the evidence on record as to whether the suit property was ancestral. Ex.D.1, which is the copy of the mutation, does not indicate whether it pertains to the property in question or not. The findings of the learned appellate Court are not based on adequate evidence and are, therefore, perverse.

The questions of law that would arise in the present appeals are : (i) whether the vendor is entitled to put forward a plea of want of title or defect of title in himself? (ii) whether the respondent is estopped from his own conduct to refuse the execution of the contract after having voluntarily executed the same?

The aforesaid questions of law have been answered in the foregoing discussion and it is held that a vendor cannot put forward a plea of want of title or the defect of title in himself after having willingly suffered a contract.

For the reasons stated above, the Regular Second Appeal No.447 of 1987 is allowed and the judgment of the lower appellate Court is set aside and it is held that the appellant shall be entitled to possession of 7 kanals of suit property on his depositing the sale consideration before the executing Court within a period of three months from today.

The respondent has filed Regular Second Appeal No.1706 of 1987 to say that the earnest money amounting to Rs.50,000/-, which has been directed to be refunded, is erroneous. For the reasons that Regular Second Appeal No.447 of 1987 has been allowed, the Regular Second Appeal No.1706 of 1987 deserves dismissal as a necessary consequence thereof.

12.9.2006 (MAHESH GROVER)
JUDGE

dss